U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Attention: Ms. Vanessa A. Countryman, Secretary

(Submitted by e-mail to rule-comments@sec.gov)

September 8, 2025

ICMA response to Request for Public Comments on SEC Concept Release on Foreign Private Issuer Eligibility – File No. S7-2025-01

The International Capital Market Association (ICMA) welcomes the opportunity to comment on the Concept Release on Foreign Private Issuer Eligibility (Concept Release) published by the U.S. Securities and Exchange Commission (Commission) on June 4, 2025. This letter is submitted in response to the Commission's request for public comments on the Concept Release.

ICMA promotes well-functioning cross-border capital markets, which are essential to fund sustainable economic growth. It is a not-for-profit membership association with offices in Zurich, London, Paris, Brussels, and Hong Kong, serving around 630 members in 70 jurisdictions globally. Its members include private and public sector issuers, banks and securities dealers, asset and fund managers, insurance companies, law firms, capital market infrastructure providers and central banks. ICMA provides industry-driven standards and recommendations, prioritising three core fixed income market areas: primary, secondary and repo and collateral, with cross-cutting themes of sustainable finance and FinTech and digitalisation. ICMA works with regulatory and governmental authorities, helping to ensure that financial regulation supports stable and efficient capital markets. See: www.icmagroup.org.

This submission is given by the ICMA primary market constituency comprised of borrowers and banks that lead-manage syndicated debt securities issues throughout Europe and beyond and law firms that advise on those transactions. This constituency includes the ICMA Legal and Documentation Committee which gathers the heads and senior members of debt capital markets legal transaction management teams of a number of ICMA member banks active in lead managing syndicated debt securities offerings from Europe.

The comments in this letter reflect the views of ICMA's primary market constituency on the implications of the potential changes discussed in the Concept Release, in particular from the perspective of their impact on syndicated debt securities sold outside the United States pursuant to the safe harbor provided by Regulation S from the registration requirements of the US Securities Act of 1933, as amended (Securities Act), in which markets ICMA's members are active. The total amount of global debt sold to investors outside the United States pursuant to Regulation S was $4.6 trillion in 2022, $5.3 trillion in 2023, and $5.8 trillion in 2024 (source: Bloomberg). As the offer and sale of this

debt is not targeted at US investors, these offerings do not implicate the foreign private issuer (FPI) accommodations with which the Concept Release is concerned. Moreover, there has been no indication that Regulation S is not working well as intended, i.e. to provide a safe harbor from the application of Section 5 of the Securities Act to offers and sales of securities that occur outside the United States.

Potential impact of changes to FPI definition on Regulation S debt offerings

Any changes to the definition of FPI, including the potential changes discussed in the Concept Release, could impact the intended application of Regulation S. Regulation S sets out three categories of restrictions which are determined, in part, by whether an issuer is a domestic issuer or a foreign issuer as defined in the rule. A foreign issuer is defined as an entity that is not a domestic issuer, and a domestic issuer is defined as an entity that is not an FPI or foreign government (see Rule 902(e) of Regulation S). If the definition of FPI were to change, a non-US issuer that currently qualifies as an FPI may not meet the new definition of FPI and therefore not qualify as a foreign issuer, and consequently not qualify as a Category 1 issuer (as being a foreign issuer is one of the requirements of Category 1). If an issuer is not a foreign issuer (because it does not meet the new definition of FPI), it would be a domestic issuer for the purposes of Regulation S. However, as a domestic issuer, in the context of non-convertible debt securities, many would not qualify for Category 2 (reserved for reporting domestic issuers), so they would fall into Category 3 and be subject to Category 3 debt restrictions. In the context of convertible debt securities, as a domestic issuer it would be subject to the Category 3 restrictions applicable to equity, which are significantly more onerous than the Category 1 equity restrictions previously applicable to it as an FPI without "substantial U.S. market interest" (SUSMI) in its securities (and more onerous than the Category 2 equity restrictions applicable to an FPI that is a reporting company with SUSMI). These would be unintended and unfair impacts of a change in the FPI definition on these non-US issuers that are not US reporting companies, are not selling their securities in the United States and are not utilising the FPI accommodations available to non-US issuers selling registered securities into the United States with which the Concept Release has expressed concerns.

For the above reasons, ICMA's comments are as follows:

1. **ICMA urges the Commission not to make any changes to the definition of FPI.** If deemed necessary, the Commission should address the concerns raised in the Concept Release by making targeted, incremental changes to existing disclosure requirements applicable to FPIs accessing the US markets through registered offerings or as reporting issuers.

2. **If the Commission decides to address its concerns by changing the definition of FPI, ICMA strongly recommends that the current FPI definition should continue to apply to Regulation S.** This could be achieved by limiting the changes to the FPI definition to only a certain segment of non-US issuers (for example, non-US issuers with equity securities solely listed in the United States that do not meet certain additional criteria, such as a minimum market capitalization requirement). Continuing to apply the existing FPI definition to Regulation S is consistent with a solution that the SEC has suggested in the context of the exemption from registration under Rule 12g3-2(b) under the US Securities Exchange Act of 1934, as amended, for the continued application of the current FPI definition in that context (see Question 63 of the Concept Release).

ICMA is aware of the comment letter submitted by the Forum for US Securities Lawyers in London and supports the points made in Comment 4 in relation to Regulation S and Comment 5.

We hope you find our comments above helpful and would be pleased to discuss them with you at your convenience.

Yours faithfully,

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